

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing November 14, 2015 causally related to her accepted employment injury.

FACTUAL HISTORY

On April 5, 2010 appellant, then a 49-year-old mail clerk, filed a notice of recurrence (Form CA-2a) claiming disability beginning March 4, 2010 causally related to a May 12, 2008 employment injury.³ She attributed her recurrence of disability to performing repetitive work duties in the course of her federal employment. On April 19, 2010 OWCP advised appellant that it was adjudicating her notice of recurrence as a new occupational disease claim as she had attributed her condition to new work factors. It accepted the occupational claim, assigned OWCP File No. xxxxxx010, for right lateral epicondylitis.

On April 6, 2010 appellant accepted a limited-duty position with the employing establishment, offered under OWCP File No. xxxxxx501. In a duty status report (Form CA-17) dated August 9, 2010, Dr. Carol Holobinko, an osteopath, found that appellant could resume her usual employment. In a claim for compensation (Form CA-7) dated December 17, 2010, submitted under OWCP File No. xxxxxx010, the current file, the employing establishment indicated that appellant had returned to her regular employment.

On November 14, 2015 the Office of Personnel Management (OPM) determined that appellant was disabled from employment “due to carpal tunnel syndrome, tendinitis, epicondylitis, sacroiliitis, disc disease, and lumbar sprains.”

On October 18, 2016 appellant filed a notice of recurrence (Form CA-2a) claiming disability beginning November 14, 2015 causally related to her accepted employment injury.⁴ She advised that she had retired on disability. The employing establishment indicated that appellant had performed her usual employment following her original injury.

In a development letter dated December 7, 2016, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence required to establish her claim. It noted that the current medical evidence was insufficient to meet her burden of proof as it predated her alleged November 14, 2015 recurrence of disability. OWCP afforded appellant 30 days to submit additional evidence.

By decision dated January 13, 2017, OWCP found that appellant had not established a recurrence of disability commencing November 14, 2015 due to her accepted employment injury.

³ OWCP had previously accepted appellant’s May 12, 2008 occupational disease claim for right lateral epicondylitis, assigned OWCP File No. xxxxxx501. It additionally accepted that she sustained lumbar sprain due to a traumatic injury on October 24, 2013, assigned OWCP File No. xxxxxx929. OWCP has not administratively combined appellant’s claims.

⁴ On September 16, 2016 appellant filed a claim for compensation (Form CA-7) from November 14, 2015 to September 3, 2016. OWCP advised her to file a notice of recurrence.

Thereafter, appellant submitted a modified job offer effective April 20, 2015 from the employing establishment, noting that her work restrictions had changed. The job offer provided that the relevant date of injury or recurrence was April 1, 2015. Appellant accepted the position on May 8, 2015.

In an April 27, 2016 agency certification of reassignment and accommodation efforts form, the employing establishment asserted that it was not possible to reassign appellant to another position or accommodate her due to the severity of her medical condition.

On November 7, 2017 appellant, through counsel, requested reconsideration. In an accompanying October 11, 2017 statement, she related that she had initially performed limited-duty work after an October 24, 2013 employment injury, assigned OWCP File No. xxxxxx929. On February 11, 2015 appellant began working limited duty under the current OWCP File No. xxxxxx010. She sustained an injury to her back in April 2015, and a supervisor had recommended that she apply for disability retirement. The supervisor had told appellant that she could also elect workers' compensation. Appellant accepted a limited-duty position in April 2015, but was unable to perform the duties of the position. She maintained that her physician had found that she required light-duty employment under both OWCP File Nos. xxxxxx010 and xxxxxx929. Appellant asserted that the employing establishment told her that she had to retire after OPM approved her application for disability retirement as it had no position within her restrictions.

In support of her reconsideration request, appellant submitted February 11 and June 19, 2015 duty status reports (Form CA-17) from a physician diagnosing strain and carpal tunnel syndrome and providing work restrictions.⁵ In a report of employee's emergency treatment form dated July 28, 2015, a physician listed work restrictions.

By decision dated February 13, 2018, OWCP denied modification of its January 17, 2017 decision.⁶

In a progress report dated August 21, 2018, Dr. Elizabeth M. Stein, Board-certified in preventive medicine, evaluated appellant for a right wrist and elbow injury that had occurred in January 2014. She noted that appellant had "retired with disability for her carpal tunnel syndrome and low back pain in November 2015." Dr. Stein diagnosed employment-related right carpal tunnel syndrome, right medial epicondylitis, resolved right lateral epicondylitis from "an established workers' comp[ensation] case from 2014," and resolved low back pain.

On December 28, 2018 appellant, through counsel, requested reconsideration. Counsel contended that the employing establishment had withdrawn her limited-duty employment and thus she had established an employment-related recurrence of disability.

⁵ The name of the physician is not legible.

⁶ By decision dated October 10, 2017, OWCP denied appellant's claim for a schedule award. Following a preliminary review, by decision dated January 18, 2018, an OWCP hearing representative set aside the October 10, 2017 decision. By decision dated July 19, 2018, OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity.

By decision dated February 25, 2019, OWCP denied modification of its February 13, 2018 decision. It found that appellant had not provided medical evidence supporting that she was disabled due to her accepted condition of lateral epicondylitis beginning November 14, 2015. OWCP further determined that she had not been working in a light-duty assignment at the time of the alleged recurrence of disability as she had resumed her usual employment on August 9, 2010.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁷ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁸

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁹

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.¹⁰ Where no such rationale is present, the medical evidence is of diminished probative value.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing November 14, 2015 causally related to her accepted employment injury.

⁷ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

¹⁰ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

¹¹ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

Appellant asserted that she had sustained a recurrence of disability due to the employing establishment's withdrawal of her limited-duty assignment. The employing establishment, however, indicated that she had resumed her regular work duties following her employment injury and there is no evidence in the case record establishing that she worked limited duty under OWCP File No. xxxxxx010 after August 9, 2010. Appellant accepted a modified job offer from the employing establishment effective April 20, 2015 that indicated that the date of injury or recurrence was April 1, 2015. She related that she had sustained an injury to her back in April 2015. While appellant submitted duty status reports (Form CA-17) from a physician who diagnosed strain and carpal tunnel syndrome and listed work restrictions, there is no evidence that she was working limited duty at the time of her claimed recurrence of disability on November 15, 2015 due to her accepted right lateral epicondylitis. The issue, consequently, is whether the medical evidence establishes that she was disabled from her usual employment beginning that date.¹²

In an August 21, 2018 report, Dr. Stein noted that appellant had injured her right elbow and wrist in January 2014. She indicated that she had retired in November 2015 due to low back pain and carpal tunnel syndrome. Dr. Stein diagnosed employment-related right carpal tunnel syndrome, right medial epicondylitis, resolved right lateral epicondylitis from a 2014 workers' compensation case, and resolved low back pain. She did not, however, find that appellant's right lateral epicondylitis had worsened such that she was disabled from employment beginning November 14, 2015. As Dr. Stein failed to address the relevant issue of whether she had sustained an employment-related recurrence of disability, her report is insufficient to meet appellant's burden of proof.¹³

On appeal counsel asserts that appellant had sustained a recurrence of disability as a matter of law. As found above, however, appellant has not demonstrated that she stopped work on November 14, 2015 due to the withdrawal of limited-duty employment due to her accepted employment injury of right lateral epicondylitis or due to a worsening of her employment-related condition and thus has failed to establish a recurrence of disability.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing November 14, 2015 causally related to her accepted employment injury.

¹² Moreover, these reports are of no probative value as the signature is illegible and, thus, the author cannot be determined to be a physician. *See* C.S., Docket No. 19-0999 (issued October 10, 2019); J.B., Docket No. 19-0568 (issued August 19, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *See* A.A., Docket No. 19-0957 (issued October 22, 2019); D.B., Docket No. 19-0481 (issued August 20, 2019).

¹⁴ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board